600.

# SUPREME COURT OF THE UNITED STATES.

## No. 115.

---

## ROBERT J. VAN DEWATER, APPELLANT,

*v.*

## EDWARD MILLS, CLAIMANT OF THE STEAMSHIP "YANKEE BLADE," HER TACKLE, &c.

---

ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

---

INDEX.


| | Original. | Print. |
|---|---|---|
| Transcript of the Record from the United States District Court, | 1 | 2 |
| Libel, | 2 | 2 |
| Exhibit "A," | 11 | 5 |
| Stipulation and Agreement, | 13 | 6 |
| Monition and Marshal's Return, | 15 | 7 |
| Claim, | 17 | 8 |
| Stipulations for costs by claimant, | 19 | 9 |
| Consent for release of ship, &c., | 20 | 10 |
| Bond for release, | 21 | 10 |
| Exceptions to Libel, | 23 | 11 |
| Stipulation for C. K. & Oliver Garrison to go on stipulation for costs, | 24 | 12 |
| Stipulation for claimant's costs, | 25 | 12 |
| Final Decree in United States District Court, | 26 | 13 |
| Index of Transcript from United States District Court, | 28 | 13 |
| Certificate of Clerk of United States District Court, | 28 | 13 |
| Proceedings in the Circuit Court, | 29 | 14 |
| Appeal Stipulation, | 29 | 14 |
| Appeal (Petition for), | 31 | 15 |
| Proceedings in Court upon trial, | 33 | 15 |
| Opinion of the Court, | 35 | 16 |
| Decree, | 48 | 21 |
| Appeal (Petition for), | 49 | 21 |
| Appeal Bond, | 50 | 22 |
| Stipulation, | 51 | 23 |
| Clerk's Certificate, | 55 | 24 |
| Certificate of the Judge, | 56 | 24 |
| Citation and service, | 58 | 24 |

United States of America, District of California.

Be it remembered, that, at the July term, in the year of our Lord one thousand eight hundred and fifty-five, before the Honorable M. Hall McAllister, Judge of the Circuit Court of the United States for the District of California, at the Court-house, in the City of San Francisco, an appeal was taken from a judgment or decree of the District Court of the United States for the Northern District of California, rendered in the suit of R. J. Van Dewater against The Steamship "Yankee Blade."

And afterwards, to wit: on the 17th day of August, in the year last aforesaid, a "transcript of the record," from the said District Court, was filed in said cause, in words and figures as follows, to wit:

United States District Court for the Northern District of California.

ROBERT J. VANDEWATER
*v.*
STEAMER "YANKEE BLADE."

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States for the Northern District of California.

The Libel of Robert J. Vandewater, of the City of San Francisco, in the State of California, against the Steamer "Yankee Blade," whereof Henry Randal is now, or late was Master, now lying in the port of San Francisco, her tackle, apparel, engines, furniture, and boats; and, also, against all persons intervening for their interest therein in a cause of contract, civil and maritime, alleges as follows:

First. That the said steamer is a vessel of the United States, now lying in the port of San Francisco.

Second. That heretofore, to wit, on the 24th day of September, 1853, at the City of New York, one William H. Brown, then and there being sole owner of the Steamer "America," and having the possession, control, and management thereof, entered into a written contract with one Edward Mills, then andthere, and still being the owner of the said Steamship "Yankee Blade," and also of a steamer called "The Uncle Sam," and having the possession, control, and management of the said steamers; a copy of which said contract is hereto annexed, and marked "A."

Third. That at the time of making the said contract, and at the several periods in this libel mentioned, the ordinary course of the passenger trade between the ports of New York and San Francisco (that is the trade of carrying passengers from one of those ports to the other), was by steamer running between the ports of San Fran-

cisco and Panama in the Pacific Ocean, and by a corresponding or connecting steamer running between New York and Aspinwall on the Atlantic Ocean, the steamers on the Pacific Ocean leaving San Francisco on the first and fifteenth or sixteenth days of each month, and those on the Atlantic Ocean leaving New York on the fifth and twentieth days of each month, so that they may ordinarily arrive at and depart from Aspinwall and Panama, so as to carry passengers through from one end of the journey to the other, without unnecessary detention on the Isthmus. That it is, and was at the several times aforesaid, almost universally customary, and usual, in the said trade, for passengers to pay their passage-money in New York, to San Francisco, and vice versa, and to receive at the commencement of the journey tickets entitling them to transportation to the termination of it, excepting only the transit over the Isthmus, and that the said contract was made with reference to such custom of trade (the said Steamer Uncle Sam being then at San Francisco, and the said Steamer America at New York). The object of said contract was, first, to employ the said Steamer America and Uncle Sam for one voyage in the transportation of freight and passengers between the ports of San Francisco and New York, by the aforesaid ordinary mode of transit via the Isthmus of Panama; and, secondly, it being at that time the intention of said Brown to send the said Steamer America round to San Francisco, that she should on that voyage touch at Panama, and there receive and transport to San Francisco freight and passengers, who should be brought from New York to Aspinwall to meet her by the said Steamer Yankee Blade.

Fourth. That the said contemplated voyage of the America on the Atlantic side, and the Uncle Sam on the Pacific side, first provided for in said contract, has been fulfilled and performed by both the said vessels well and truly, and in good faith.

Fifth. That, in pursuance of the intention hereinbefore mentioned, the said Steamer America, was, on or about the second day of December, 1853, despatched, by the said Brown, from New York for San Francisco (with instructions to stop at Panama), and that her day of sailing, from New York was fixed, on consultation with and by consent of the aforesaid Edward Mills, on behalf of the said Steamer Yankee Blade, in order that the America might have time to arrive at Panama, at or about the fourth day of February, 1854, so that the said Steamer Yankee Blade might leave New York on the 20th of January, 1854, to meet her, and thus have time to return to New York in season to leave that port again on the 20th of February, which was her appointed time of sailing, to make her connection with the Uncle Sam at her regular time; and that the master of the said Steamer America was ordered to take every means and precaution during said voyage to insure reaching Panama at or about the fourth of February aforesaid.

Sixth. That, after the said Steamer America had so departed

from New York for Panama as aforesaid, and before her arrival at Panama, the said Edward Mills, on behalf of the said Steamer Yankee Blade, absolutely and unqualifiedly abandoned the said contract, and refused the further performance thereof; and, at or about the 12th of January, 1854, and before the America had time to reach Panama, determined, and entered into a contract or contracts with other persons to send the said Steamer Yankee Blade round to San Francisco, and proceeded to make her ready for such voyage; that the said William H. Brown, learning that the said Edward Mills contemplated violating his said contract, and not despatching the said Steamer Yankee Blade as required by the said contract, caused notice in writing and verbally to be given to him, to the effect that the said Steamer America would be at Panama, in season to receive and transport to San Francisco such passengers as should be brought to Aspinwall for her by the said Steamer Yankee Blade, and requiring the said Mills to despatch the said Steamer Yankee Blade, from New York, according to the terms of said contract, on the 20th of January, 1854.

Seventh. That the said Edward Mills, now the owner of the said Steamer Yankee Blade, did not, nor would, despatch the said Steamer Yankee Blade as required by the said contract, either on the said 20th day of January, or at any other time; but wholly neglected and refused so to do, and, on the contrary thereof, did despatch the said Steamer Yankee Blade on a voyage to San Francisco, for which port she sailed from New York on the third day of February, 1854, thus putting it out of the power of said steamer, or her owners, to comply with said contract.

Eighth. That the said Steamer America is capable of carrying six hundred passengers, and the said Yankee Blade a like number, and that the said Steamer America was at Panama on the 5th day of February 1854, in all respects ready and prepared to convey that number of passengers from Panama to San Francisco, but that in consequence of the aforesaid breach of contract by the said Steamer Yankee Blade, her agents and owners, she had to proceed, and did proceed on her voyage to San Francisco (where she arrived on the 26th of February), at great expense, without either freight or passengers, except a very trifling amount.

Ninth. That on the said 20th of January, 1854, over two thousand passengers did leave the city of New York for San Francisco, by the ordinary modes of transit over the Isthmus of Panama and Nicaragua, large numbers of whom, and as the libellant believes, at least six hundred would have taken passage by the said Steamer Yankee Blade and America (both being new and favorite ships), had the said Steamer Yankee Blade fulfilled the aforesaid contract, by sailing on that day. And the libellant avers on information and belief, that over three hundred more passengers were in New York on the said 20th of January, seeking passage for San Francisco, by

the same modes of transit, and could not obtain the same; the said other steamers starting on that day being unable to transport them.

Tenth. That the average price paid by passengers for transportation from New York to San Francisco, on the said 20th of January, was one hundred and fifty dollars, or thereabouts, and that the said Steamer America's share of that passage money, of six hundred passengers at that rate, would have amounted to sixty-seven thousand five hundred dollars, and that the said Bronn sustained damages to that amount, by the aforesaid breach of contract by the said Steamer Yankee Blade, less only the cost of food for that number of passengers, during the said voyage from Panama to San Francisco, which would not have exceeded seven thousand five hundred dollars or thereabouts.

Eleventh. That the said Brown did, by an instrument in writing, under his hand and seal, executed and delivered the 28th day of July, 1854, assign, transfer, and set over to the libellant, the aforesaid damages and claim therefor, against the said Steamer Yankee Blade, her owners and agents, and that the same is now the property of the libellant, and the said damages are due to him.

Twelfth. That all and singular the premises are true, and within the admiralty and maritime jurisdiction of the United States, and of this honorable Court. Wherefore, the libellant prays that process in due form of law, according to the course and practice of this honorable Court, in cases of admiralty and maritime jurisdiction, may issue against the said Steamship Yankee Blade, her tackle, apparel, engines, boilers, furniture, and boats, and that all persons having or pretending to have any right, title, or interest therein, may be cited to appear and answer all and singular, the matters hereinbefore set forth; and that this honorable Court would be pleased to decree the payment of the aforesaid damages, and that the said Steamship Yankee Blade may be condemned and sold, to pay the same, and that the libellant may have such other and further relief in the premises, as in law and justice he may be entitled to receive.

R. J. VANDEWATER.
JANES, DOYLE & BARBER,
Proctors for Libellant.
J. T. BOYD,
Advocate.

Sworn to before me this 30th day of July, 1854.

J. J. PAPY,
U. S. Commissioner.

*Copy A.*

This agreement, made this twenty-fourth day of September, 1853, at the city of New York, between Edward Mills, as agent for owners of Steamship "Uncle Sam," and William H. Brown, as agent for the owners of Steamship "America," witnesseth, that said Mills and Brown, hereby agree with each other, as agents for the owners

of said ships before named, to run the two ships in connection for one voyage, on terms as follows, viz.:

Of all moneys received from passengers, and for freight contracted through, between New York and San Francisco, both ways, the "Uncle Sam" shall receive seventy-five per cent., and the America shall receive twenty-five per cent. The money to be received here, by said E. Mills, and the share of the "America" to be paid over to William H. Brown, or to his order (before the sailing of the ship), and the share due the "America," of moneys received on the Pacific side, to be paid over to said Brown, or to his order, immediately on the arrival of the passengers in New York, by E. Mills, who guarantees, as agent aforesaid, the true and honest return of all funds received by his agents on the Pacific. It is understood that this trip is to be made by the "Uncle Sam" leaving San Francisco on or about the 15th of October, and the America leaving New York on or about the 20th of October next.

Each ship is to pay all expenses of her running and outfits, and to be responsible for her own acts in every respect. Each ship is to retain all the money received for local freight or passengers, that is, for such freight and passengers as only pay to the ports the individual ship runs to, without any division with the other ship.

No commissions are to be charged anywhere on any receipts for the "America," by said Mills, in division, but the expense of advertising, and the amount paid out for runners, at all points, are to be borne by each ship in the same proportion as receipts are divided between them.

In consideration of all the above well and truly performed in good faith, Edward Mills, as agent for the Steamship "Yankee Blade," hereby agrees that when the "America" arrives at Panama, on her voyage hence for the Pacific Ocean, said Ship "Yankee Blade" shall leave New York, at such time as to connect with the "America," conveying passengers and freight on the same terms as is hereinbefore agreed (say 25 per cent. to the "Yankee Blade," and 75 per cent. to the "America"). Provided only, that said connection shall be made at a time that will not prevent the "Yankee Blade" from making her connection with the "Uncle Sam," at her regular time.

E. MILLS,
W. H. BROWN.

Indorsed: Filed July 31, 1854. By John A. Monroe, Clerk.

United States of America.

District Court of the United States, for the Northern District of California.

Filed the 31st day of July, 1854.

Whereas a libel was filed in this Court on the thirty-first day of July, in the year of our Lord one thousand eight hundred and fifty-

four, by R. J. Vandewater, against the Steamship "Yankee Blade," and for reasons and causes in the said libel mentioned, and the said R. J. Vandewater and Theodore Payne, his surety, party hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the libellant or his surety, execution may issue against his goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars—conditioned the libellant above-named shall pay all costs and charges that may be awarded against them in any decree.

R. J. VANDEWATER,
THEODORE PAYNE.

In this Court.

Taken and acknowledged this 31st day of July, 1854, before me.

J. J. PAPY,
U. S. Commissioner.

Northern District of California, *ss.*

Theodore Payne, party to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

THEODORE PAYNE.

Sworn to this 31st day of July, 1854, before me.

J. J. PAPY,
U. S. Commissioner.

Northern District of California, *ss.*

The President of the United States of America.

To the Marshal of the Northern District of California, greeting:

[SEAL OF U. S. DIST. COURT.] Whereas, a libel hath been filed in the District Court of the United States, for the Northern District of California, on the 31st day of July, in the year of our Lord one thousand eight hundred and fifty-four, by R. J. Vandewater, against Steamer "Yankee Blade," her tackle, &c., for the reasons and causes in the said libel mentioned, and praying the usual process and monition of the said Court in that behalf to be made, and that all persons interested in the said steamer or vessel, her tackle, &c., may be cited in general and special, to answer the premises, and all proceedings being had that the said steamer or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said steamer

or vessel, her tackle, &c., and to detain the same in your custody until the further order of the Court respecting the same, and to give due notice to all persons claiming the same, or knowing, or having anything to say why the same should not be condemned and sold pursuant to the prayer of the said libel, that they may be, and appear before the said Court, to be held in and for the Northern District of California, on the 15th day of August, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction, otherwise on the next day of jurisdiction thereafter, then and there to interfere a claim for the same, and to make their allegations in that behalf. And what you shall have done in the premises, do you then and there make return thereof, together with this writ.

Witness the Hon. Ogden Hoffman, Jr., Judge of said Court, at the City of San Francisco, in the Northern District of California, this 31st day of July, in the year of our Lord one thousand eight hundred and fifty-four, and of our Independence the seventy-ninth.

JOHN A. MONROE,
Clerk.

By ALEX. M. SCHELL,
Deputy.

JANES, DOYLE, & BARBER,
Proctors for Libellant.

*Marshal's Return.*

In obedience to the within monition, I attached the Steamer "Yankee Blade," therein described, on the 31st day of July instant, and have given due notice to all persons claiming the same, that this Court will, on the 15th day of August, 1854 (if that day should be a day of jurisdiction; if not, on the next day of jurisdiction thereafter), proceed to the trial and condemnation thereof, should no claim be interposed for the same.

W. H. RICHARDSON,
United States Marshal.

By W. H. McMINN.

Dated July 31st, 1854. Filed Sept. 19th, 1854.

JNO. A. MONROE,
Clerk.

District Court of the United States, for the Northern District of California, *ss.*

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States, for the Northern District of California:

Edward Mills, of the City of New York, sole owner of the Steamship "Yankee Blade," her tackle, apparel and furniture, intervening for his interest in said vessel, her apparel, tackle and furniture, appears before this Honorable Court, and claims the said steamship, her

tackle, apparel, and furniture, and states that he is the true and bona fide owner thereof, and that no other person is the owner thereof; and thereupon the said claimant prays, that this Honorable Court will be pleased to decree a restitution of the same to him, and otherwise right and justice to administer in the premises.

E. MILLS,
By W. C. RALSTON,
Attorney in Fact.
J. B. CROCKETT,
Proctor.

William C. Ralston being duly sworn, deposes: That the above-named Edward Mills is a resident citizen of the State of New York, and is not now within the State of California; and that deponent is his general agent at the City of San Francisco, for the management of his steamships, and all business connected therewith, and has authority to represent said Mills in all suits brought against said ships; and that the above claim is just and true, to the best of deponent's knowledge and belief.

W. C. RALSTONE.

Sworn to before me this 1st day of August, 1854.

ALEX. M. SCHELL,
United States Commissioner.

Indorsed. Filed August 1st, 1854. John A. Monroe, Clerk.

United States of America. District Court of the United States, for the Northern District of California.

Whereas a libel was filed in this Court on the 31st day of July, in the year of our Lord one thousand eight hundred and fifty-four, by R. J. Vandewater, against the steamer "Yankee Blade," for reasons and causes in the said libel mentioned; and whereas W. C. Ralston has this day filed a claim on behalf of Edward Mills, and the said W. C. Ralston and C. K. Garrison, his surety, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said claimants or his surety, execution may issue against the goods, chattels, and lands for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is bound in the sum of five hundred dollars, conditioned the claimants above named shall pay all costs and charges that may be awarded against them in any decree

C. K. GARRISON,
W. C. RALSTON,

by this Court.

Taken and acknowledged this 1st day of August, 1854, before me,

ALEX. M. SCHELL,
United States Commissioner.

Northern District of California, *ss.*

C. K. Garrison, party to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

C. K. GARRISON.

Sworn to this 1st day of August, 1854, before me,

ALEX. M. SCHELL,
United States Commissioner.

United States District Court.

ROBERT J. VANDEWATER
*v.*
THE STEAMER YANKEE BLADE.

We consent that the ship be released to claimants, on taking the bond of Mr. C. K. Garrison, without further surety, in the sum of twenty thousand dollars, $20,000.

JANES, DOYLE, & BARBER,
Proctors for Libellant.

August 1st, 1854: To the Clerk.

Indorsed: Filed August 1st, 1854. John A. Monroe, Clerk.

Know all men, by these presents, that I, C. K. Garrison, am held and firmly bound unto W. H. Richardson, United States Marshal for the Northern District of California, in the sum of twenty thousand dollars lawful money of the United States of America, to be paid to the said W. H. Richardson, his successors, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, and each of us jointly and severally, our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals. Dated this first day of August, in the year of our Lord, one thousand eight hundred and fifty-four.

Whereas a libel has been filed in the District Court of the United States, for the Northern District of California, on the 31st day of July, 1854, by R. J. Vandewater, against the ship or vessel called the "Yankee Blade," in a certain action to civil and maritime, for therein alleged to be due and owing to the said libellant, amounting to sixty thousand dollars.

The condition of this obligation is such, that if the above-bounden C. K. Garrison shall abide and answer the decree of the Court in such cause, then the above obligation to be void; otherwise to remain in full force and virtue.

C. K. GARRISON. [SEAL.]

Sealed and delivered in presence of

ALEX. M. SCHELL.

Northern District of California, *ss.*

C. K. Garrison, being duly sworn, each for himself, says that he resides in San Francisco, and that he is worth the sum of twenty thousand dollars over and above all his just debts and liabilities.

Sworn before me this first day of August, 1854.

C. K. GARISON.

ALEX. M. SCHELL,
U. S. Commissioner.

We admit the sufficiency of the within surety.

JANES, DOYLE, & BARBER,
Proc. for Libellant.

Indorsed. Filed August 1st, 1854, by John A. Monroe, Clerk.

District Court of the United States for the Northern District of California.

To the Honorable Ogden Hoffman, Jr., Judge of the District Court of the United States for the Northern District of California.

The exceptions of Edward Mills, claimant and sole owner of the Steamship "Yankee Blade," to the libel of Robert J. Vandewater, libellant, allege that the said libel is insufficient, as follows:

First Exception.—That on the face of said libel it appears that the alleged cause or causes of action therein set forth are not within the admiralty and maritime jurisdiction of this Honorable Court.

Second Exception.—There is no cause of action set forth in said libel, whereby the said Steamship "Yankee Blade" can be proceeded against *in rem* in this Honorable Court.

Third Exception.—On the face of said libel, it appears the libellant is not entitled to the relief therein prayed for, nor to any decree against the said steamship.

And, therefore, the said claimant prays that the said libel may be dismissed with costs.

CROCKETT & PAGE,
Proctors for Claimant.

Indorsed: Filed August 12, 1854. John A. Monroe, Clerk.

ROBERT J. VANDEWATER
*v.*
Steamship "YANKEE BLADE."

District Court of the United States for Northern District of California.

It is hereby agreed that the stipulations for costs in the above cause, filed on behalf of the claimant, be cancelled by the clerk, and that a new stipulation be filed in lieu thereof, to be given by C.

K. Garrison and Oliver Garrison on behalf of the said claimant, the first stipulation to be cancelled on filing the second.

Dated at San Francisco, the 4th day of December, 1854.

J. B. CROCKETT,
Proctor for Claimant.

WM. BARBER,
Proctor for Libellants.

Indorsed: Filed Dec. 8, 1854. Jno. A. Monroe, Clerk.

United States of America. District Court of the United States, for the Northern District of California.

Whereas a libel was filed in this Court on the 31st day of July, in the year of our Lord one thousand eight hundred and fifty-four, by R. J. Vandewater, against the Steamer "Yankee Blade," her tackle, &c., for reasons and causes in the said libel mentioned, and whereas W. C. Ralston has filed his claim therein on behalf of the owner, Edward Mills, and whereas a stipulation has been filed substitutes C. K. Garrison and Oliver Garrison in the place of W. C. Ralston, &c., in the stipulation heretofore given, and the said C. K. Garrison and Oliver Garrison, sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said claimant or his sureties, execution may issue against their goods, chattels, and lands, for the sum of five hundred dollars.

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be and each of them is bound in the sum of five hundred dollars, conditioned the claimant above named shall pay all costs and charges that may be awarded against them on any decree by this Court.

C. K. GARRISON,
O. GARRISON.

Taken and acknowledged this 8th day of December, 1854, before me,

ALEX. M. SCHELL,
U. S. Commissioner.

Northern District of California, *ss.*

C. K. Garrison and Oliver Garrison, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

C. K. GARRISON,
O. GARRISON.

Sworn to this 8th day of December, 1854, before me,

ALEX. M. SCHELL,
U. S. Commissioner.

At a stated term of the District Court of the United States of

America, for the Northern District of California, held at the court house in the City of San Francisco, on Monday, the 4th day of June, in the year of our Lord one thousand eight hundred and fifty-five.

Present, the Honorable Ogden Hoffman, Jr., District Judge.

R. J. VANDEWATER
*v.*
Steamer "YANKEE BLADE."

This cause coming on to be heard on the exceptions to the libel filed in the above-entitled suit, and having been argued by the advocates for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed by the Court, that the said exceptions be sustained, and that the libel of the said libellant be dismissed with costs, and that claimant have execution therefor.

OGDEN HOFFMAN, JR.,
U. S. District Judge.

Indorsed: Filed June 4th, 1855. John A. Monroe, Clerk.

United States District Court, Northern District of California.

ROBERT J. VANDEWATER
*v.*
STEAMER YANKEE BLADE.

Index of Transcript.

Pages
1 to 8. Libel with Exhibit.
9. Stipulation for Costs by Libellant.
10 and 11. Monition and Marshal Return.
11 and 12. Claim.
12 and 13. Stipulation for Costs by Claimant.
13 and 14. Consent for Release of Ship, &c.
14 and 15. Bond for Release.
15 and 16. Exceptions to Libel.
16. Stipulation for C. K. Garrison and Oliver Garrison to go on Stipulation for Cost.
17. Stipulation for Claimant Cost.
18. Final Decree.

I, John A. Monroe, Clerk of the District Court of the United States of America, for the Northern District of California, do hereby certify the foregoing to be a transcript of the record of the said District Court in the cause named at the beginning of this transcript, made up pursuant to Rule LIII, December Term, 1854, of the Supreme Court of the United States.

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of the said District Court, this twenty-fifth day of June, in the year of our Lord eighteen hundred and fifty-five, and of our Independence the seventy-ninth.

JOHN A. MONROE,
Clerk.

By W. H. CHEVON,
Deputy.

And on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-five, an appeal stipulation was filed in this cause, to wit:

Circuit Court of the United States for the Districts of California.

In Admiralty.

ROBERT J. VANDEWATER
*v.*
STEAMSHIP YANKEE BLADE.

Whereas, an appeal has been taken to this Court from the District Court of the United States for the Northern District of California, in a certain case wherein Robert J. Vandewater is libellant against the Steamship Yankee Blade, her tackle, engines, &c., E. Mills, claimant, by the said libellant, and the said appellant has been ordered to give security, by the stipulation of himself and competent sureties, in the sum of five hundred dollars, for the payment of all damages and costs on the appeal in this Court and in the Supreme Court.

Now, therefore, the stipulators undersigned hereby stipulate in said sum of five hundred dollars, to pay all damages and costs on the appeal in this Court and in the Supreme Court, in case such appeal shall intervene.

R. J. VANDEWATER,
F. MASON, JR.

Taken and acknowledged this 16th day of June, A. D. 1855, before me,

GEORGE PEN. JOHNSTONE,
U. S. Commissioner.

Northern District of California, *ss.*

F. Mason, Jr., party to the above stipulation, being duly sworn, says, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. MASON, JR.

Sworn to, this 16th day of June, A. D. 1855, before me.

GEORGE PEN. JOHNSTONE,
U. S. Commissioner.

And afterwards, to wit, on the 17th day of August, in the year last aforesaid (1855), an appeal was filed in this cause in the words and figures following, to wit:

Circuit Court of the United States, Northern District of California.

ROBERT J. VANDEWATER, Appellant,
*v.*
THE STEAMSHIP YANKEE BLADE.

To the Honorable the Circuit Court of the United States, for the Northern District of California.

The appeal of the above-named appellant, respectfully showeth, that on or about the 31st day of July, in the year one thousand eight hundred and fifty-four, the above-named appellant, Robert J. Vandewater, exhibited his libel in the District Court of the United States for the Northern District of California, against the Steamship Yankee Blade, praying, amongst other things, that said steamship might be attached, and sold, to pay the demand of the appellant, for the damages sustained, as set forth in his said libel.

That, on or about the 12th day of August, 1854, the claimant of said steamship filed certain exceptions thereto in the nature of a demurrer to said libel.

That, on the first day of May, 1855, the said exceptions came on for argument before the said District Court, and were argued by the respective counsel for the libellant and claimant.

That, on the fourth day of June, 1855, the said District Court rendered a decree sustaining said exceptions, and dismissing said libel.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as the said exceptions should have been overruled.

And this appellant, for this reason, appeals from the whole of said decree in favor of said claimant, and he prays that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon made as to the said Circuit Court shall seem just, and that the said appellee be condemned to pay to this appellant his costs and damages in the premises.

And in said appeal he intends to have said cause heard anew on the pleadings in the said District Court.

WILLIAM BARBER,
Proctor.

And afterwards, to wit, on the eleventh day of September, of July term, in the year of our Lord one thousand eight hundred and fifty-five, before the Judge aforesaid, at the Court-house aforesaid, being a term of said Court, the following proceedings were had in said cause, and duly entered of record, to wit:

In testimony whereof, I have hereunto set my hand, and [L. S.] affixed the seal of the said District Court, this twenty-fifth day of June, in the year of our Lord eighteen hundred and fifty-five, and of our Independence the seventy-ninth.

JOHN A. MONROE,
Clerk.

By W. H. CHEVON,
Deputy.

And on the sixteenth day of June, in the year of our Lord one thousand eight hundred and fifty-five, an appeal stipulation was filed in this cause, to wit:

Circuit Court of the United States for the Districts of California.

In Admiralty.

ROBERT J. VANDEWATER
*v.*
STEAMSHIP YANKEE BLADE.

Whereas, an appeal has been taken to this Court from the District Court of the United States for the Northern District of California, in a certain case wherein Robert J. Vandewater is libellant against the Steamship Yankee Blade, her tackle, engines, &c., E. Mills, claimant, by the said libellant, and the said appellant has been ordered to give security, by the stipulation of himself and competent sureties, in the sum of five hundred dollars, for the payment of all damages and costs on the appeal in this Court and in the Supreme Court.

Now, therefore, the stipulators undersigned hereby stipulate in said sum of five hundred dollars, to pay all damages and costs on the appeal in this Court and in the Supreme Court, in case such appeal shall intervene.

R. J. VANDEWATER,
F. MASON, JR.

Taken and acknowledged this 16th day of June, A. D. 1855, before me,

GEORGE PEN. JOHNSTONE,
U. S. Commissioner.

Northern District of California, *ss.*

F. Mason, Jr., party to the above stipulation, being duly sworn, says, that he is worth the sum of five hundred dollars over and above all his just debts and liabilities.

F. MASON, JR.

Sworn to, this 16th day of June, A. D. 1855, before me.

GEORGE PEN. JOHNSTONE,
U. S. Commissioner.

And afterwards, to wit, on the 17th day of August, in the year last aforesaid (1855), an appeal was filed in this cause in the words and figures following, to wit:

Circuit Court of the United States, Northern District of California.

ROBERT J. VANDEWATER, Appellant,
*v.*
THE STEAMSHIP YANKEE BLADE.

To the Honorable the Circuit Court of the United States, for the Northern District of California.

The appeal of the above-named appellant, respectfully showeth, that on or about the 31st day of July, in the year one thousand eight hundred and fifty-four, the above-named appellant, Robert J. Vandewater, exhibited his libel in the District Court of the United States for the Northern District of California, against the Steamship Yankee Blade, praying, amongst other things, that said steamship might be attached, and sold, to pay the demand of the appellant, for the damages sustained, as set forth in his said libel.

That, on or about the 12th day of August, 1854, the claimant of said steamship filed certain exceptions thereto in the nature of a demurrer to said libel.

That, on the first day of May, 1855, the said exceptions came on for argument before the said District Court, and were argued by the respective counsel for the libellant and claimant.

That, on the fourth day of June, 1855, the said District Court rendered a decree sustaining said exceptions, and dismissing said libel.

And this appellant is advised and insists that the said decree is erroneous, inasmuch as the said exceptions should have been overruled.

And this appellant, for this reason, appeals from the whole of said decree in favor of said claimant, and he prays that the said decree, and every part thereof, may be reversed, with costs, or such other decree thereupon made as to the said Circuit Court shall seem just, and that the said appellee be condemned to pay to this appellant his costs and damages in the premises.

And in said appeal he intends to have said cause heard anew on the pleadings in the said District Court.

WILLIAM BARBER,
Proctor.

And afterwards, to wit, on the eleventh day of September, of July term, in the year of our Lord one thousand eight hundred and fifty-five, before the Judge aforesaid, at the Court-house aforesaid, being a term of said Court, the following proceedings were had in said cause, and duly entered of record, to wit:

R. J. VANDEWATER
*v.*
THE STEAMSHIP YANKEE BLADE.

Appeal in Admiralty from the District Court of the United States, for the Northern District of California. Argument made to Court by William Barber, Esq., Proctor for appellant. Cause continued until to-morrow.

And afterwards, to wit, on the twelfth day of September, in the year last aforesaid, at the Court-house aforesaid, before the said Court, the following further proceedings were had in said cause, to wit:

R. J. VANDEWATER
*v.*
THE STEAMSHIP "YANKEE BLADE."

Cause continued from yesterday. Argument made to Court by Gwyn Page, Esq., Proctor for appellee. Argument concluded; cause submitted.

And afterwards, to wit, on the thirteenth day of September, in the year last aforesaid, at the Court-house aforesaid, before the said Court, the following further proceedings were had in said cause, to wit:

R. J. VANDEWATER
*v.*
STEAMSHIP "YANKEE BLADE."

Decree made, affirming the decree of the United States District Court, and dismissing the libel with costs. Appeal taken.

*Opinion of the Court.*

R. J. VANDEWATER
*v.*
The Steamer YANKEE BLADE.
In Admiralty.

Plea to Jurisdiction.

A libel *in rem* was exhibited in the Court below, claiming damages for the violation of an agreement, entered into at New York, on the 24th of September, 1853, which is in the following words.

This agreement, made this twenty-fourth day of September, 1853, at the city of New York, between Edward Mills as agent for the owners of Steamship "Uncle Sam," and William H. Brown as agent for the owners of Steamship "America," Witnesseth, That said Mills and Brown hereby agree with each other, as Agents for the owners of said Ships before named, to run the two Ships in connection for one voyage, on terms as follows, viz.: Of all moneys received from passengers, and for freight contracted through, between New York

and San Francisco, both ways, the Uncle Sam shall receive seventy-five per cent., and the America shall receive twenty-five per cent., the money to be received here by said E. Mills, and the share of the "America" to be paid over to William H. Brown or to his order, before the sailing of the ship, and the share due the "America" of moneys received on the Pacific side to be paid over to said Brown or to his order, immediately on the arrival of the passengers in New York, by E. Mills, who guarantees as Agent aforesaid, the true and honest return of all funds received by his Agents on the Pacific. It is understood that this trip is to be made by the "Uncle Sam" leaving San Francisco on or about the 15th of October, and the "America" leaving New York on or about the 20th of October next.

Each ship is to pay all the expenses of her running and outfits, and to be responsible for her own acts in every respect. Each ship is to retain all the moneys received for local freight or passengers, that is for such freight and passengers as only pay to the ports the individual ship runs to without any division with the other ship.

No commissions are to be charged anywhere on any receipts for the "America" by said Mills in division, but the expense of advertising and the amount paid out for runners at all points, are to be borne by each ship in the same proportion as receipts are divided between them.

In consideration of all the above well and truly performed, in good faith, Edward Mills, as Agent for the Steamship "Yankee Blade," hereby agrees that when the "America" arrives at Panama, on her voyage hence for the Pacific Ocean, said Ship "Yankee Blade" shall leave New York at such time as to connect with the "America," conveying passengers and freight on the same terms as is hereinbefore agreed (say twenty-five per cent. to the "Yankee Blade," and seventy-five per cent. to the "America") provided only that said connection shall be made at a time that will not prevent the "Yankee Blade" from making her connection with the "Uncle Sam" at her regular time.

E. MILLS,
W. H. BROWN.

To this libel certain exceptions were filed, and it was dismissed by the Court below. From that decree an appeal has been taken to this Court. To the exceptions which raises the question of jurisdiction, this Court will confine itself. For the past half century, the extent of the Admiralty jurisdiction of the Courts of this country has been a fruitful source of controversy, and though illumined as it has been, by the genius of some of our ablest Jurists, still remains a vexed question.

In 1847, in Waring v. Clark, 5 Howard, 441, the Supreme Court decided that in cases where Admiralty jurisdiction depends on loca-

lity, it extends to all torts committed on the high seas, or within the ebb and flow of the tide, as far up a river as the tide ebbs and flows, though the place be *infra corpus comitatus.* Thus much for the jurisdiction of Admiralty over torts.

In 1848, in the case of the New Jersey Navigation Co. v. Merchants' Bank, the same tribunal sustained a libel *in personam* against a Steamboat Company for the loss of specie carried in their boat, and destroyed by fire in Long Island Sound, and in 1849, in Cutter v. Rae, 7 Howard, 730, declining to entertain a similar proceeding in a cause of contribution or general average, civil and maritime, they say: "It is very much to be regretted that the jurisdiction of the Courts of Admiralty in this country, is not more clearly defined. It has been repeatedly decided in this country, that its jurisdiction is not restricted to the subjects over which the English Courts of Admiralty exercised jurisdiction at the time our constitution was adopted."

It is not necessary for the purposes of this case to enter the field of extended discussion into which any inquiry into the extent of Admiralty jurisdiction over contracts would lead us.

If that jurisdiction be admitted to the extent for which its most zealous and ablest advocate had contended, it cannot sustain the jurisdiction of this Court in the present case.

Some twenty years after his elaborate exposition of the doctrine in the case of De Lovio v. Boit, Judge Story reasserted it in the case of "The Volunteer," 1 Sumner, 551. The principle enunciated is, to use his own words, "That the Admiralty had an original, ancient, and rightful jurisdiction over all maritime contracts (that is, such contracts as respect business, trade, and navigation to, on, and over the high seas), which it might exert by a proceeding *in rem* in all cases where the maritime law establishes a lien or other right *in rem*, and by a proceeding in *personam* where no such right existed."

It follows from this principle, 1st. That all maritime contracts are within the jurisdiction of the Admiralty Courts. 2d. That there are only a portion of these contracts for the violation of which the Admiralty jurisdiction can be exercised by a proceeding *in rem*, the form adopted in this case. 3d. That such portion consists of such maritime contracts in relation to which the law has established a lien.

Admitting the contract sued on to be a maritime contract, the inquiry is, does it also belong to that class of such contracts as have annexed to them by legal implication, a lien?

It is admitted, by the Proctor for libellant, that there is no case parallel in its details with the present, but the Court is asked so to extend the principles applicable to charter-parties, as to make the lien which the law applies to these instruments, applicable to the present case.

Before viewing the contract in its analogy to a charter-party, let us consider it *per se.* It is a contract made by owners of vessels in a

home port. This circumstance is worthy of consideration in determining the question, whether a proceeding *in rem* can be sustained in this case. The question is not whether an instrument known to the maritime law, and to which it has annexed a lien, is to be divested of that lien by the fact, that such instrument was made by the owner, instead of the master of the ship. The point is whether there should be an implied lien in a contract, such as the one under consideration made by the owners, in the home port.

In the case of the Draco, 2 Sumner, 176, Judge Story, after deciding that a bottomry bond may be made by owners of a vessel in a foreign or a home port, says, "Whether upon contracts so made in the home port, a remedy lies in the admiralty *in rem*, is quite a different question." When so great an advocate for the extension of admiralty jurisdiction doubts, we certainly should pause.

Again, in Blaire v. The Ship Carter, 4 Cranch, 331, the Supreme Court says, "In the case of a bottomry bond, executed by an owner in his own place of residence, the same reason does not exist for giving an implied admiralty claim, upon the bottom (of the ship), for it is in his power to execute an express transfer or mortgage."

In view of the foregoing reasoning in relation to a marine instrument, well known to the law of the seas, in deciding whether there is an implied lien annexed by law to the contract, the subject of the present libel, and which is *sui generis*, the fact that there is no necessity for such implication, as it was in the power of the party to make an express hypothecation, is not to be overlooked.

To create such lien, it is urged that the present contract is a charter party, or if not, so analogous to it, that the rule applicable to the one should be applied to the other.

A charter-party is the hiring of the whole or part of a vessel, for the transportation of merchandise or passengers, and if it does not *ex vi termini* convey a proprietary interest, it certainly passes a claim or privilege, in the vessel recognized by the maritime law, the privilege to look upon her as answerable for the goods placed on board. That she is answerable for them, and they to her, is a well-settled and universally known rule of the law, and the contracting parties when they enter into it, are presumed to contract with full knowledge of the lien implied by law from the terms and character of the instrument. The present agreement is a personal one, between the owners of vessels, to embark them in a common enterprise, and divide the profits in the manner agreed upon, and includes a personal guarantee of one of the owners for a true return of the moneys received by his vessel. If this be a charter-party, then every agreement entered into where vessels are to be used in carrying it out is a charter-party, and the law where there is no express hypothecation of the owners, must imply a lien!

In charter-parties, there is a mutuality of liens. The ship is an-

swerable to the goods, and these again to the ship. They are joined together by the act of the parties, and they cannot be separated without the discharge of the respective liens, unless the parties consent to such separation. Here is perfect mutuality. The Court can perceive none such in this case. The agreement in this case was simply one of association. To make a direct voyage through from New York to San Francisco, for the transportation of merchandise and passengers, the owners designed simply to combine the collective capacity of their vessels, to keep open the chain of communication. The Court has been unable to find any case decided in the Supreme Court, which adjudicates that the maritime law annexes to associations made by owners of different vessels, for the purposes of trade are implied liens. The case of Andrews v. Hall, Howard, 568, is the only case which refers to these associations between the owners of vessels. But the question did not come directly before the Court. Judge Story, *arguendo*, says, "Over maritime contracts the admiralty possesses a clear and established jurisdiction, capable of being enforced in *personam* as well as *in rem*." As general as are the terms here used by Judge Story, the Court considers them as simply affirming the admiralty jurisdiction in personam over all admiralty contracts. But as we have stated, the question was not directly before the Court. In the language of Mr. Conkling (2 vol. 849) it was not an original suit, but an intervention, by third persons, for their interest against funds in Court. Had this enunciation, made by this distinguished jurist, been understood in an unrestricted sense, and deemed the doctrine of the Supreme Court, whence the expression of regret made by the Chief Justice four years later, "that it is very much to be regretted, that the jurisdiction of the Courts of Admiralty in this country is not more clearly defined." If the definition given *arguendo* by Judge Story, had been adopted by the Court, no clearer definition was needed. The jurisdiction of the admiralty would be complete over every maritime contract, of whatever kind, either by a proceeding *in rem*, or in *personam*. The only inquiry, when the former mode of proceeding was taken on a maritime contract would be, is there a thing, or the proceeds of it, to which the contract refers, in existence? The Court knows no adjudication of the Supreme Court, which has established such doctrine, and feels no disposition to adopt it in advance. The instrument in this case was executed by the owners, in their home port; there is no express hypothecation; it is an instrument unknown to the maritime laws; there is no necessity for annexing to it an implied lien; there is nothing in the transaction to raise an inference that the credit was not exclusively personal, and there is no adjudicated case in the Supreme Court annexing an implied lien to such contract. The agreement, as has been said, is simply one of association, for the purposes of trade, and there is no mutuality of lien in it.

In relation to an agreement for consortship, Mr. Conkling, in his treatise on Admiralty Jurisdiction, says, "There seems to be sufficient reasons for holding that no mutual liens arise from a contract of consortship, and therefore no suit *in rem* can be maintained for their enforcement." Benedict, another text writer, on the admiralty, says, "that vessels engaged in maritime employment, in which association increases efficiency or security, often agree to make common cause in their enterprise; such agreements, are agreements for consortship. They are maritime contracts, and are within the acknowledged jurisdiction of the admiralty of this country, § 298." But he does not intimate that they are within that class of maritime contracts described by Judge Story, in the case of The Volunteer, to which there is annexed a lien by the maritime law, which can be enforced by a proceeding *in rem.*

In this case the owners had the power to create an express lien. They have not done so; and this Court declines to create one in favor of a contract like that under consideration.

The decree of the District Court must be affirmed, and the libel dismissed.

*Decree.*

R. J. VANDEWATER
*v.*
STEAMER "YANKEE BLADE." } In Admiralty.

In the Circuit Court of the United States, for the Districts of California. This cause coming on to be heard, on an appeal from the decree of the District Court of the United States, for the Northern District of California, dismissing the libel exhibited in this cause, and having been argued by the proctors for the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged, and decreed, by the Court, that the decree of said District Court be affirmed, and that the libel of the said libellant R. J. Vandewater be dismissed with costs, and that claimant have execution therefor.

M. HALL M'ALLISTER,
Judge Circuit Court United States, District of California.

SAN FRANCISCO, September 13th, 1855.

And on the day and year last above and aforesaid, the libellant filed the following:

Circuit Court of the United States for the Districts of California.

R. J. VANDEWATER, Libellant,
*v.*
The Steamship "YANKEE BLADE." }

The above-named libellant, conceiving himself aggrieved by the

final sentence or decree entered on the 13th day of September, 1855, in the above-entitled cause, doth hereby appeal therefrom to the Supreme Court of the United States; and he prays that this his appeal may be allowed, and that a transcript of the record and proceedings in the cause, duly authenticated, may be sent to said Supreme Court.

WILLIAM BARBER,
Proctor for Libellant.

Sept. 13, 1855.

The foregoing being allowed afterwards, to wit, on the twenty-sixth day of September of the year last aforesaid, the following bond was filed:

Circuit Court of the United States of America. Districts of California.

ROBERT J. VANDEWATER, Appellant,
*v.*
The Steamer "YANKEE BLADE," &c.,
EDWARD MILLS, Claimant, Appellee.

Know all men by these presents, that we, R. J. Vandewater, Samuel J. Hensley, and A. L. Tubbs, of the City of San Francisco, are held and firmly bound unto the claimant of said steamer, Edward Mills, in the sum of one thousand dollars, to be paid to the said appellee, for the payment of which, well and truly to be made, we bind ourselves and each of us, our and each of our heirs, executors, and adminstrators, jointly and severally, firmly by these presents, sealed with our seals. Dated this 26th day of September, 1855.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States at the City of Washington, in the District of Columbia, to reverse the decree rendered in the above suit by the Circuit Court of the United States, for the District of California.

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect, and answer all damages and costs if he fail to make his appeal good, then this obligation to be void, otherwise to remain in full force and virtue.

R. J. VANDEWATER, [SEAL.]
SAML. J. HENSLEY, [SEAL.]
A. L. TUBBS, [SEAL.]

Sealed and delivered, taken and acknowledged, this 26th day of September, 1855, before me,

GEO. PEN. JOHNSTONE,
Clerk and U. S. Commissioner.

United States of America, Northern District of California, *ss.*

Samuel J. Hensley and A. L. Tubbs, being duly sworn, depose

and say, and each for himself saith, that he is worth the sum of one thousand dollars over and above all his just debts and liabilities.

SAMUEL J. HENSLEY,
A. L. TUBBS.

Sworn to before me this 26th day of September, 1855, before me,
GEO. PEN. JOHNSTONE,
Clerk and U. S. Commissioner.

On the day and year last aforesaid, the following stipulation was also filed in this cause:

United States Circuit Court.

R. J. VANDEWATER
*v.*
The Steamer "YANKEE BLADE."

We consent that the libellant have ten days further time to file his appeal bond or stipulation in this case.

CROCKETT & PAGE,
Proctors for Claimant.

Sept. 24, 1855.

*Citation.*

United States of America, *ss.*

To Edward Mills, greeting: You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the 1st Monday of December next, pursuant to an appeal from a decree of the Circuit Court of the United States for the Districts of California, wherein Robert J. Vandewater is appellant and you are appellee, to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 13th day of September in the year of our Lord 1855.

[L. S.] M. HALL M'ALLISTER,
Judge Circuit Court U. S., for the District of California.

Attest:

GEO. PEN. JOHNSTONE,
Clerk.

Let the above citation issue, on the appellant filing a stipulation for costs of appeal, with surety, in the sum of one thousand dollars.

M. HALL M'ALLISTER,
Judge Circuit Court U. S., District of California.

Sept. 13, 1855.

The decision of the Circuit Court referred to in the within citation having been appealed from, during the same term of the Court,

at which it was rendered, we hereby, on behalf of the respondent, admit of due service of said citation.

CROCKETT & PAGE,
Proctors for Resp.

San Francisco, October 1, 1855.

In Circuit Court of the United States, for the Districts of California.

I, Geo. Pen. Johnston, Clerk of the Circuit Court of the United States for the Districts of California, at San Francisco, do hereby certify, that the foregoing 54 pages contain a full, correct, and faithful transcript of the record of the proceedings had in the above-entitled cause.

In witness whereof I have hereunto set my hand, and affixed the seal of said Court, at the Court house in the City of San Francisco, this 20th day of October, A. D. 1855.

[SEAL.]

GEO. PEN. JOHNSTONE,
Clerk.

United States of America, Districts of California, *ss.*

I, M. Hall McAllister, Judge of the Circuit Court of the United States for the Districts of California, do hereby certify, that Geo. Pen. Johnston, who hath signed the foregoing certificate, is and was on the day of the date of the same, the Clerk of said Court at the City of San Francisco, duly commissioned and qualified; that his signature above to said certificate is genuine, and that the said attestation or certificate is in due form of law.

Dated this 20th day of October, A. D. 1855.

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, Districts of California.

United States of America, *ss.*

To Edward Mills, greeting: You are hereby cited and admonished to be and appear before the Supreme Court of the United States, on the 1st Monday of December next, pursuant to an appeal from a decree of the Circuit Court of the United States for the Districts of California, wherein Robert J. Vandewater is appellant, and you are appellee: to show cause, if any there be, why the said decree should not be corrected, and speedy justice be done to the parties in that behalf.

Witness, the Honorable Roger B. Taney, Chief Justice of the said Supreme Court of the United States, this 13th day of September, in the year of our Lord 1855.

[SEAL.]

M. HALL McALLISTER,
Judge of the Circuit Court of the United States, for the Districts of California.

Attest:

GEO. PEN. JOHNSTONE,
Clerk.

Let the above citation issue on the appellant filing a stipulation for costs of appeal, with surety, in the sum of one thousand dollars.

M. HALL McALLISTER,
Judge Circuit Court U. S.,
Dist. of California.

September 13, 1855.

The decision of the Circuit Court referred to in the within citation having been appealed from during the same term of the Court, at which it was rendered, we hereby, on behalf of the respondent, admit due service of said citation.

CROCKETT & PAGE,
Proctors for Resp.

San Francisco, October 1, 1855.

No. 115; California C. C. U. S.; Robert J. Vandewater, lib't and app't, *v.* Edward Mills, claim't, the Steamship Yankee Blade, her tackle, &c. Filed 19th November, 1855.—U. S. Circuit Court, Districts of California; R. J. Vandewater *v.* The Steamship Yankee Blade; Citation, Wm. Barber, Proctor; Received Oct. 6th, 1855, Geo. Pen. Johnstone, Clerk.